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Attorney for BANK OF AMERICA, N.A.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	§	CASE NO. 18-54590-JWC
	§	
VINSON GWINN,	§	
Debtor	§	CHAPTER 13
	§	
BANK OF AMERICA, N.A.,	§	
Movant	§	CONTESTED MATTER
	§	
v.	§	
	§	
VINSON GWINN; NANCY J.	§	
WHALEY, Trustee	§	
Respondents	§	

**MOTION OF BANK OF AMERICA, N.A. FOR RELIEF FROM STAY OF ACTION  
AGAINST DEBTOR PURSUANT TO 11 U.S.C. § 362(a) AND WAIVER OF THIRTY  
DAY REQUIREMENT PURSUANT TO § 362(e)**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW BANK OF AMERICA, N.A., Movant, by and through the undersigned  
attorney, and moves the Court as follows:

1. This Motion is brought pursuant to 11 U.S.C. §362(d) in accordance with Rule 4001 of the Bankruptcy Rules.
2. On or about March 16, 2018, VINSON GWINN (hereinafter "Debtor") filed a petition for an order of relief under Chapter 13 of the Bankruptcy Code.
3. At the time of filing the Chapter 13 petition, Movant held a Note executed on

August 20, 2008, by VINSON B GWINN in the original amount of FIFTY-NINE THOUSAND SEVENTY-THREE DOLLARS AND ZERO CENTS (\$59,073.00) with interest thereon at the rate of 4.250% per annum, as modified by loan modification dated August 01, 2012. A true and correct copy of the Note is attached hereto as Exhibit "A".

4. The indebtedness is secured by a Security Deed dated August 20, 2008 and executed by VINSON B GWINN on real estate with all improvements known as:

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 220 OF THE 14TH DISTRICT OF FULTON COUNTY, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHEASTERLY SIDE OF BEN HILL ROAD 1885.2 FEET SOUTHERLY AND SOUTHEASTERLY AS MEASURED ALONG THE EASTERLY AND NORTHEASTERLY SIDE OF BEN HILL ROAD FROM THE POINT OF INTERSECTION OF THE EASTERLY SIDE OF BEN HILL ROAD AND NORTH LINE OF LAND LOT 220, A SAID POINT OF BEGINNING ALSO BEING THE SOUTHEASTERLY LINE OF PROPERTY NOW OR FORMERLY OWNED BY JACQUES UPSHAW, THENCE RUNNING SOUTHEASTERLY ALONG THE NORTHEASTERLY SIDE OF BEN HILL ROAD 172.15 FEET TO AN IRON PIN AT THE NORTHWESTERLY LINE OF PROPERTY NOW OR FORMERLY OWNED BY B.N. TUCKER REALTY CO.; THENCE NORTHEASTERLY ALONG THE NORTHWESTERLY LINE OF SAID TUCKER PROPERTY 270.4 FEET TO AN IRON PIN; THENCE NORTHERLY 236.4 FEET TO AN IRON PIN AT THE SOUTHEASTERLY LINE OF THE ABOVE MENTIONED UPSHAW PROPERTY, SAID POINT ALSO BEING 1384.2 FEET SOUTHEASTERLY FROM THE NORTH LINE OF LAND LOT 220; THENCE SOUTHWESTERLY ALONG THE SOUTHEASTERLY LINE OF SAID UPSHAW PROPERTY 352 FEET TO THE NORTHEASTERLY SIDE OF BEN HILL ROAD AND THE POINT OF BEGINNING.

MORE COMMONLY KNOWN AS: 2795 BEN HILL ROAD, EAST POINT, GA 30344

A true and correct copy of the Security Deed is attached hereto as Exhibit "B".

5. Debtor failed to maintain current the post-petition payments due under the Note and as of October 04, 2019, Debtor is in arrears for:

3 payment(s) which represents payment(s) for August 01, 2019 through October 01, 2019 (\$622.49 each) totaling \$1,867.47

Less debtor suspense funds of \$0.00 for total post petition arrears of \$1,867.47

6. The outstanding indebtedness to Movant is \$58,003.13 principal plus accrued interest, late charges, attorneys fees and costs as provided in the Note and Security Deed.

7. In accordance with the terms of the Note and Security Deed, Movant would allege that it is entitled to reasonable post-petition attorneys fees, including, but not limited to, fees, if any, for the preparation and filing of a proof of claim and fees and costs for the filing of this Motion for Relief from Stay.

8. Debtor has failed to provide adequate protection to Movant which constitutes cause to terminate the automatic stay of 11 U.S.C. §362(e).

9. By reason of the foregoing, Movant requests the Court to terminate the stay so Movant may proceed to foreclose in accordance with its Note and Security Deed.

10. Movant reserves the right to assert an 11 U.S.C. § 362(d)(2) Cause of Action, if appropriate, at the hearing on Movant's Motion for Relief.

WHEREFORE, Movant prays that this Court enter an Order, after notice and hearing, terminating the automatic stay as to Movant and waives right to hearing within thirty (30) days as provided by 11 U.S.C. 362(e); alternatively Movant may be made whole by having all post petition payments, fees and costs brought current. Movant further prays that upon termination of the automatic stay, the pre-petition arrears shall no longer be funded under the Chapter 13 Plan, the post petition payments shall no longer be required & 11 U.S.C. § 1322 (b)(5) shall no longer be applicable, therefore Movant and Trustee shall no longer be subject to the subsequent notice requirements of Federal Rule of Bankruptcy Procedure 3002.1 with regard to the above-described property and that the Court waive the provision of Rule 4001(a)(3) and

that Movant be permitted to immediately enforce and implement any order granting relief from the automatic stay; that Movant be awarded its reasonable post-petition attorneys fees and expenses for this Motion; and, that Movant be granted such other and further relief as is just.

Respectfully submitted,

BARRETT DAFFIN FRAPPIER  
TURNER & ENGEL, LLP

BY: /s/ BRANDI R. LESESNE 10/10/2019

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ATTORNEY FOR MOVANT

**CERTIFICATE OF SERVICE**

I hereby certify that on October 10, 2019, true and correct copy of the foregoing Notice of Hearing and Motion for Relief from Stay as to Debtor was served via electronic means as listed on the Court's ECF noticing system or by regular first class mail to the parties on the attached list.

Respectfully submitted,

BARRETT DAFFIN FRAPPIER  
TURNER & ENGEL, LLP

/s/ BRANDI R. LESESNE

10/10/2019

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ATTORNEY FOR MOVANT

**DEBTOR:**

VINSON GWINN  
2795 BEN HILL ROAD  
ATLANTA, GA 30344

VINSON GWINN  
2795 BEN HILL ROAD  
EAST POINT, GA 30344

**TRUSTEE:**

NANCY J. WHALEY  
303 PEACHTREE CENTER AVENUE  
SUITE 120, SUNTRUST GARDEN PLAZA  
ATLANTA, GA 30303

**DEBTOR'S ATTORNEY:**

HOWARD P. SLOMKA  
SUITE 2100  
3350 RIVERWOOD PARKWAY  
ATLANTA, GA 30339

**PARTIES IN INTEREST:**

None

**PARTIES REQUESTING NOTICE:**

None